

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 99-0429
SALES AND USE TAX
For Years 1998 AND 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Jeopardy Assessment – Waiver and/or reduction.**

Authority: IC § 6-8.1-5-3.

Taxpayer's spouse and representative requesting a jeopardy assessment be released or reduced based on the taxpayer's spouse volunteering payments.

STATEMENT OF FACTS

Taxpayer owned and operated a bar with the liquor license held by a partner in the operation. Taxpayer was assessed for unpaid and unreported sales taxes and a jeopardy assessment was issued against taxpayer and taxpayer's partner. After an indictment and several arrest warrants were issued, taxpayer fled and cannot be located. The bar was closed due to the assessment's effect on the liquor license. Taxpayer's spouse, who is not under indictment or under a jeopardy assessment, is requesting a release and reduction of the assessment so the bar can resume operations and the taxpayer's spouse can generate income to pay the assessment.

DISCUSSION

The jeopardy assessment is to be imposed on the state's finding that the taxpayer, owing taxes, "intends to quickly leave the state... or do any other act that would jeopardize the collection of those taxes," IC § 6-8.1-5-3. The assessment requires immediate payment by taxpayer of the amount due. Should the taxpayer fail to make this payment the department "may issue or request the state police department to serve a jeopardy tax warrant against the person and, either without or with the assistance of the sheriffs of any counties in the state, may levy on and sell the person's property which is located in those counties." IC § 6-8.1-5-3.

The only recourse provided a taxpayer is:

In place of the levy and sale procedure, the department may accept from the person a bond for the payment of the taxes, if the bond is in an amount at least equal to the amount of the total liability and if the bond is through a surety acceptable to the department. IC § 6-8.1-5-3.

There is no provision within the statute for a release or reduction of the assessment once it is applied.

Given the taxpayer's current position as a fugitive, taxpayer's actions confirm the jeopardy finding and the assessment was correctly applied. The taxpayer's spouse argues that a release and/or reduction would facilitate a transfer of the assets to her and she could resume the business operation and generate revenues to repay the state.

While the department is permitted to refrain from collection efforts, and taxpayer is granted a bond option to forestall collection efforts, the department has no specific authority to rescind or reduce a jeopardy assessment. Given taxpayer's actions, no compelling reason is presented to override the statute. As taxpayer's spouse notes, the assessment is harming the taxpayer's family as well as the taxpayer, but taxpayer's actions in placing his family in this position are not grounds for a release or reduction of the assessment

FINDINGS

Taxpayer's protest is denied.